

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TODD C.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. C22-5198-BAT

**ORDER AFFIRMING THE
COMMISSIONER’S DECISION**

Plaintiff appeals the ALJ's March 2021 decision finding disability ended on August 1, 2015. Dkt. 8 at 4-6. For the reasons below, the Court **AFFIRMS** the Commissioner’s final decision and **DISMISSES** the case with prejudice.

BACKGROUND

In March 2018, Plaintiff applied for benefits, alleging disability as of February 13, 2014. Tr. 332-38. The ALJ held a hearing in September 2019, Tr. 37-60, and issued a decision finding Plaintiff disabled from February 13, 2014, through July 4, 2018, but not thereafter. Tr. 128-43. The Appeals Council granted review of this decision and remanded for further proceedings. Tr. 151-53. On remand, the ALJ conducted another hearing in February 2021, Tr. 61-92, and issued a decision in March 2021 finding Plaintiff disabled from February 13, 2014, through August 1, 2015, but not thereafter. Tr. 16-29. The Appeals Council denied Plaintiff’s request for review,

1 making the ALJ's 2021 decision the Commissioner's final decision. Tr. 1-6. Plaintiff now
2 appeals the ALJ's 2021 decision.

3 DISCUSSION

4 Plaintiff's opening brief raises one issue: "Whether the ALJ's Finding of not disabled
5 from August 2, 2015, and beyond is supported by substantial evidence." Dkt. 8 at 2. This does
6 not clearly identify reversible error as the Commissioner notes in response. Dkt. 9 at 2. The
7 Commissioner submits Plaintiff appears to argue the ALJ erred in finding the opinions of Robert
8 Thompson, M.D. a testifying medical expert ("ME") to be persuasive, and misevaluated the
9 opinions of treating physician Robert Lang, M.D. *Id.*

10 Turning first to Dr. Lang, Plaintiff contends the doctor is a "treating source" who made
11 objective findings in a November 2016 examination that are consistent with symptoms Plaintiff
12 suffered, and also opined in December 2018 Plaintiff could sit, stand, or walk for 6 hours in an 8-
13 hour day. Dkt. 8 at 6. This argument implies the ALJ erred by failing to account for all the
14 limitations assessed by Dr. Lang. However, in the November 2016 report, Dr. Lang indicated
15 while Plaintiff cannot return to the work "at the job of injury," "[he] has been found capable of
16 working full-time in a light duty capacity." Tr. 1604. The ALJ adopted this assessment by
17 finding Plaintiff has the RFC to perform light work, Tr. 24, and cannot perform past relevant
18 work, at the medium level. Tr. 28. The Court concludes the ALJ did not err in assessing this
19 opinion.

20 As to Dr. Lang's December 2018 opinion that Plaintiff can lift or carry 20 pounds
21 occasionally and 10 pounds frequently, and can stand or walk and sit for six hours each in an
22 eight-hour workday (but would need the option to change positions between sitting and standing
23 every 45 minutes), the ALJ adopted these limitations in determining Plaintiff has the RFC to

1 perform light work. Tr. 24. The Court concludes the ALJ adopted Dr. Lang's opinions that
 2 Plaintiff can perform light work and incorporated those opinions in determining RFC and in the
 3 hypothetical questions posed to the vocational expert. Plaintiff carries the burden to show the
 4 ALJ harmfully erred and failed to do so. *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).
 5 The Court accordingly affirms the ALJ's evaluation of Dr. Lang's opinions.

6 Plaintiff also argues the ALJ erred by giving weight to the opinions of Dr. Thompson,
 7 who also opined Plaintiff could perform light work. Even assuming the ALJ so erred, the error is
 8 harmless because the ALJ's decision, as discussed above, properly incorporates Dr. Lang's
 9 opinion that Plaintiff can perform light work in the RFC determination and in making a step five
 10 finding. The Court notes the ALJ also found persuasive the opinions of Derek Leinenbach, M.D.
 11 who examined Plaintiff in 2018 and opined, as did Dr. Lang in 2018, that Plaintiff could stand,
 12 walk, sit 6 hours in an 8-hour day, and could lift/carry no more than 20 pounds occasionally and
 13 10 pounds frequently. Tr. 26-27. The Court accordingly concludes any potential error the ALJ
 14 made in assessing Dr. Thompson's opinions is harmless because there remains substantial
 15 evidence supporting the ALJ's conclusion that Plaintiff has the RFC to perform light work and
 16 the error does not negate this conclusion. *See e.g. Carmickle v. Comm'r Soc. Sec. Admin.*, 533
 17 F.3d 1155 (9th Cir. 2008).

18 CONCLUSION

19 For the foregoing reasons, the Commissioner's decision is **AFFIRMED** and this case is
 20 **DISMISSED** with prejudice.

21 DATED this 30th day of August, 2022.

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 BRIAN A. TSUCHIDA
 United States Magistrate Judge

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